

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Defendant(s).

INITIAL STANDING ORDER FOR CRIMINAL CASES ASSIGNED TO JUDGE S. JAMES OTERO

IN SOME RESPECTS FROM THE LOCAL RULES.

- 1. Court Hours:** Criminal motions are heard on Monday at 10:00 a.m., unless the Court orders otherwise. (If Monday is a holiday, the next motion date is Tuesday following the Monday holiday.) It is not necessary to clear a motion date. Do not call the Courtroom Deputy Clerk. Motions in limine are heard on the first day of trial at 9:00 a.m.

- 1 **2. Location:** Judge Otero's courtroom is located in Room 880, United States District Court,
2 255 East Temple Street, 8th Floor, Los Angeles, California 90012.
- 3 **3. Communication with Chambers:**
- 4 a. Counsel are ordered to list their fax number along with their address, telephone
5 number, and e-mail address on all papers submitted to the Court.
- 6 b. Counsel are not to initiate telephone calls to Judge Otero's chambers, law clerks or
7 assistant. Telephone inquiries regarding the status of a motion, stipulation, or
8 proposed order are not returned. Counsel may access the Court's website
9 (www.cacd.uscourts.gov) for Local Rules, filing procedures, judges' procedures and
10 schedules, calendars, forms, and Pacer access. Additional questions can be
11 resolved by accessing the Western Division 24-hour automated calling system
12 ((213) 894-1565) or the case docket. Only in the event that counsel cannot find the
13 desired information through all available resources, counsel may contact the
14 Courtroom Deputy Clerk, Victor Cruz, by telephone at (213) 894-1796 or by e-mail
15 at victor_cruz@cacd.uscourts.gov.
- 16 **4. Calendar Conflicts:** If there is a calendar conflict, counsel are to inform the Courtroom
17 Deputy Clerk as soon as possible prior to the date of the conflict and are to follow the Local
18 Rules and Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").
- 19 **5. Transcripts:** To order a transcript, e-mail the Court Recording Department at
20 courtrecording_cacd@cacd.uscourts.gov.
- 21 **6. Courtesy Copies:** Counsel are ordered to provide conformed courtesy copies of all
22 motions, oppositions, and replies. One courtesy copy must be delivered to the courtesy
23 copy box located at the door of courtroom 880 by 6:00 p.m. the day the document was filed
24 or e-filed. Further, counsel are ordered to e-mail courtesy copies of all trial documents to
25 the Courtroom Deputy Clerk.
- 26 **7. Discovery:** Counsel must comply with discovery and notice pursuant to Fed. R. Crim. P.
27 12, 12.1, 12.2, 12.3, 15, and 16. The duty to disclose discovery is a continuing duty.
28

- 1 a. **Discovery Conference:** Within seven days following the trial setting, counsel must
2 meet and confer regarding discovery. It is the joint duty of counsel to schedule and
3 hold the Discovery Conference. The government must assure time and availability
4 for such conference within the time herein provided unless the Discovery
5 Conference is waived in writing by defendant and his counsel and such waiver is
6 filed with the Court.
- 7 b. **Discovery by Defendant:** Upon defendant's request, the government must
8 provide:
- 9 i. **Defendant's Statements:** The government must disclose to defendant's
10 attorney its intent to use any of defendant's statements or confessions. If
11 defendant questions the admissibility of such statement or confession, the
12 hearing required by *Jackson v. Denno*, 378 U.S. 368 (1964) will be held on
13 the first day of trial prior to the opening statements of counsel. The
14 government must permit defendant's attorney to inspect, copy, or photograph
15 any relevant written or recorded statements or confessions made by the
16 defendant within the possession, custody, or control of the government, the
17 existence of which is known or may become known to the attorney for the
18 government. The government must advise defendant's attorney of the
19 substance of an oral statement available to the government in response to
20 any interrogation by an employee or agent of any governmental agency,
21 local, state, or federal, or private source involved in the investigation or
22 reporting of the offenses charged.
- 23 ii. **Results of Examinations and Tests:** The government must permit
24 defendant's attorney to inspect, copy, or photograph any relevant results or
25 reports of physical or mental examinations, and of specific tests or
26 experiments made in connection with the case within the possession,
27 custody, or control of the government, the existence of which is known or
28

1 may become known to the attorney for the government and which are
2 material to the defendant's case.

3 iii. **Testimony Before the Grand Jury:** The government must permit
4 defendant's attorney to inspect, copy, or photograph any relevant recorded
5 testimony defendant gave before a grand jury.

6 iv. **Documents and Tangible Objects:** The government must permit defendant
7 to inspect, copy, or photograph books, papers, documents, tangible objects,
8 buildings, or places that are the property of defendant and are within the
9 possession, custody, or control of the government.

10 v. **Prior Record:** The government must provide defendant's attorney with
11 defendant's prior criminal record in the possession of the government.

12 vi. **Evidence Favorable to the Defendant:** The government must permit
13 defendant to inspect, copy, or photograph evidence favorable to defendant.

14 vii. **Electronic Surveillance:** The government must advise defendant's attorney
15 of the existence or non-existence of any evidence in the possession of the
16 government obtained as the result of any electronic surveillance or wiretap.

17 viii. **Informers:** The government must advise defendant's attorney of the
18 contemplated use of informer testimony (fact of informer only).

19 ix. **Brady Material:** The government must permit defendant to inspect, copy,
20 or photograph all material within the purview of *Brady v. Maryland*, 373 U.S.
21 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).

22 x. **Expert Witnesses:** The government must permit defendant to inspect, copy,
23 or photograph a resume of the qualifications of any expert witness which the
24 government intends to call in its case in chief together with a statement of the
25 expert's expected substantive testimony.

26 c. If, in the judgment of the government, it would not be in the interest of justice to
27 make any one or more disclosures set forth in paragraph (7)(b) above and
28

requested by defendant's counsel, disclosure may be declined, and defense counsel is advised to immediately bring a formal noticed motion to the Court.

d. **Discovery by the Government:**

i. **Expert Witnesses:** Defendant's attorney must at the conference disclose to the government a written resume of the qualifications of any expert witness who defendant intends to call in his case in chief together with a statement of the expert's expected substantive testimony.

ii. **Scientific or Medical Reports:** Defendant's attorney must at the conference disclose to the government the results of any scientific or medical report which defendant intends to use in the presentation of his case in chief.

iii. **Defense of Alibi:** The government must at the conference notify defendant in writing of the specific time, date, and place at which the offenses charged are alleged to have been committed.

(1) For any alleged offense that defendant intends to offer an alibi, defendant must in writing, within three days after the conference, notify the government of the specific place at which he claims to have been at the time of the alleged offense and the names and addresses of the witnesses who will support that alibi.

(2) Within five days after the conference or such other time as the Court may direct, the government must inform defendant of the names and addresses of the witnesses who will support the government's assertion that defendant was present at the scene of the alleged offenses.

(3) Failure to comply with the time limits set forth herein will result in sanction pursuant to Fed. R. Crim. P. 12.1(d).

iv. **Defense Based on Mental Condition:** Defendant's attorney must at the conference disclose to the government in writing whether defendant will rely upon the defense of insanity at the time of the alleged crime or of mental

disease, defect, or other condition bearing upon whether he had the mental state required for the offenses charged.

(1) Notice of such claimed defense must also be filed.

(2) Failure to give notice in writing will result in sanctions pursuant to Fed. R. Crim. P. 12.2(d).

v. **Entrapment:** Defendant's attorney must at the conference disclose to the government whether defendant will rely on the defense of entrapment.

e. **Joint Conference Report:** Within five days of the completion of the Discovery Conference, the parties must file a Joint Conference Report that includes:

- i. The date the conference was held;
- ii. The name of the government attorney with whom the conference was held;
- iii. The contested matters of discovery and inspection and any additional discovery or inspection desired by defendant;
- iv. The fact of disclosure of all material favorable to the defendant or the absence thereof within the meaning of *Brady*, 373 U.S. 83 and related cases;
- v. The resolution of foundational objections to documentary evidence proposed to be used by both parties (except for the purposes of impeachment);
- vi. The resolution of chain of custody (where in issue); and
- vii. The resolution of the admissibility of scientific analysis without need of calling the expert at the trial.

f. **Objections to Evidence:** The requirement of foundation (including chain of custody) for tangible evidence disclosed during the Discovery Conference is waived unless a specific objection to the evidentiary foundation of that evidence is made in the Joint Conference Report.

- i. If, at the Discovery Conference, a party produces an expert report containing the result of a scientific test performed by a competent expert witness (as shown by a resume), any objection regarding the admissibility of that report must appear in the Joint Conference Report or will be deemed waived.

g. This Order does not preclude discovery under Fed. R. Crim. P. 16(c).

8. **Motions and Motion Cut-Off Date:** Unless the Local Rules prescribe a different time for filing a particular motion, all pretrial motions (including motions to suppress) and motions in limine, except motions governed by Local Criminal Rule 9, must be filed and served not later than twenty-one days before the trial and set for hearing not later than eight days prior to trial at 9:00 a.m. Counsel's estimate of the time required for presentation of the motion must be set forth adjacent to the caption.

a. The party opposing the motion must file a response not later than fourteen days before trial or not later than seven days after service of the motion, whichever is earlier. Responding counsel's estimate of the time required for presentation of opposition of the motion must be set forth in the caption of the responding papers.

b. Memoranda of points and authorities in support of or in opposition to motions may not exceed twenty-five pages. Replies may not exceed twelve pages. Only in rare instances and for good cause shown will the Court grant an application to extend page limitations. No supplemental brief may be filed without proof of leave of Court. Typeface must comply with Local Civil Rule 11-3.1.1. NOTE: If Times Roman font is used, the size must be no less than 14; if Courier is used, the size must be no less than 12. Footnotes must be in typeface no less than one size smaller than text size and must be used sparingly. Filings which do not conform with all local rules and this Order will not be considered.

9. **Trial:**

a. Counsel must arrive thirty minutes early on the first day of trial.

b. Defense counsel must present the appropriate number of copies of exhibits for all parties to the action.

c. The government must present the Courtroom Deputy Clerk with the following documents on the first day of trial:

i. **Three copies** of the government's witness list.

ii. **Three copies** of the government's exhibit list.

- 1 iii. **All of the government's exhibits**, with official exhibit tags attached and
2 bearing the same number shown on the exhibit list.
- 3 (1) Defendant's counsel is not required to deliver his exhibits to the
4 Courtroom Deputy Clerk on the first day of trial, but is responsible for
5 affixing completed exhibit tags with the case name and case number
6 to the exhibits that defendant intends to use in his case.
- 7 (2) Exhibit tags can be obtained from the receptionist in the main Clerk's
8 Office, located at 312 North Spring Street, Room G-8.
- 9 (3) Exhibits must be numbered 1, 2, 3, 4, etc., NOT 1.1, 1.50, etc.
10 Counsel for all parties should agree on the range of numbers to be
11 assigned to each party (e.g., Government exhibits to be 1-99,
12 Defendant One to be 100-199; Defendant Two 200-299). If a blow up
13 is an enlargement of an existing exhibit, it must be designated with the
14 number of the original exhibit followed by an "A".
- 15 (4) Counsel for the government should be aware that the Court will order
16 that exhibits such as firearms, narcotics, etc., remain in the custody
17 of federal agents during the pendency of the trial. These agents will
18 be required to sign the appropriate form in order to take custody of
19 such exhibits. It will be the responsibility of the agents to produce said
20 items for the Court, secure them at night, and guard them at all times
21 while in the courtroom.
- 22 iv. A **Bench Book** containing a copy of all exhibits that can be reproduced.
- 23 (1) Each exhibit must be tabbed with the exhibit number for easy referral.
24 Defendant's counsel must provide the Court with a copy of its exhibits
25 as the exhibits are introduced during trial.
- 26 v. **Exhibit List:** The exhibit list must be e-mailed to the Courtroom Deputy
27 Clerk. Counsel must review and approve the exhibit list with the Courtroom
28 Deputy Clerk prior to it being given to the jury.

vi. **Witness List:** Counsel must submit a joint witness list identifying each witness who will actually testify at trial.

(1) **Trial Witness Estimate:** The witness list and summary must give accurate time estimates for each witness to conduct direct, cross, re-direct and re-cross. Counsel must include a summary of the testimony of each witness. If more than one witness is offered on the same subject matter, the witness summary should be sufficiently detailed to allow the Court to determine if the testimony is cumulative.

(2) The list must be in the form indicated by the following example:

CASE:_____ TRIAL DATE:_____

Witness Name	Party Calling Witness and Estimate	Cross Examiner's Estimate	Description of Testimony	Comments

vii. **Witness Statement:** The government must file with the Court in camera a list of the statements of all witnesses to be called by the government in its case in chief.

(1) Such statement must be filed at least ten days before trial.

(2) Such statement must identify the person taking the statement.

(3) Failure to file such statement with the Court may preclude the presentation testimony of any witness whose statement has been previously taken and available to the government.

d. If counsel need to arrange for the installation of their own additional equipment, such as a video monitor, refer to the Court's website at www.cacd.uscourts.gov under "Services" in order to reserve this equipment.

e. Before trial, the Court will give counsel an opportunity to discuss administrative matters and anticipated procedural or legal issues. During trial, if there are any matters counsel wish to discuss, counsel must inform the Courtroom Deputy Clerk.

f. The trial before the jury will commence promptly at 9:00 a.m. or earlier at the direction of the Court. Counsel are urged to anticipate matters which may need discussion or hearing outside of the presence of the jury and to raise them during this period, during breaks, or at the end of the day.

10. Joint Statement: Counsel must file a one-page Joint Statement of the Case, which the Court will read to all prospective jurors prior to voir dire. The Joint Statement is to be submitted no later than the Wednesday of the week prior to trial.

11. Jury Instructions and Verdict Forms:

a. Jury Instructions: Counsel must submit proposed substantive and general instructions. In those cases where a special verdict is desired, counsel must submit a proposed verdict form with the jury instructions.

b. The parties must submit **joint jury instructions** and a **joint proposed verdict form** (if a special verdict is desired). In order to produce these joint instructions, the parties must meet and confer sufficiently in advance of the required submission date with the goal of agreeing upon instructions and verdict forms. The jury instructions must be submitted as follows:

i. Joint Jury Instructions which are agreed to by all parties; and

ii. Disputed Jury Instructions which are proposed by one party and objected to by another party.

iii. Objections to disputed instructions must be filed no later than the Friday before the trial. Each requested jury instruction must be numbered and set forth in full on a separate page, citing the authority or source of the requested instruction.

c. The Court prefers instructions from the Manual of Model Criminal Jury Instructions for the Ninth Circuit or Federal Jury Practice and Instructions.

d. The Court will send several copies of the jury instructions into the jury room for use by the jury during deliberations. Accordingly, in addition to the filed copies, an extra set of the proposed instructions (the "Jury Copy") must be submitted to the Court

with only the text of an instruction on each page (i.e., no titles, supporting authority, indication of party proposing, etc.). This will be referred to as the "Jury Copy" of the instructions. (Duplicates will be made by the Court.)

e. Special Verdict: If counsel seek a special verdict, follow the procedure set forth in paragraphs b and c in order to formulate a joint proposed verdict form. Counsel must submit the proposed verdict form with the proposed jury instructions.

f. An Index Page must accompany all jury instructions that are submitted to the Court. The index must indicate the following: (i) the number of the instruction; (ii) a brief title of the instruction; (iii) the source of the instruction; and (iv) the page number of the instruction. For example:

<i>Number</i>	<i>Title</i>	<i>Source</i>	<i>Page Number</i>
<i>1</i>	<i>Duty of the Jury</i>	<i>9th Cir. 1.01</i>	<i>5</i>

12. Instructions Governing Procedure During Trial:

a. The hours for the first day of trial are Tuesday from 9:00 a.m. to 5:00 p.m. Thereafter, the hours are from 8:30 a.m. to 4:30 p.m. with two fifteen minute breaks and lunch from 11:30 p.m. to 1:00 p.m. Trials are held Tuesday through Friday.

b. Opening statements, examination of witnesses, and closing arguments should be made from the lectern only.

c. Counsel may not refer to their client(s) or any witness by first name during trial.

d. Counsel may not discuss the law or argue the case in opening statement.

e. When objecting, counsel may state only that counsel has an objection and its legal ground (e.g., hearsay). Counsel may *not* argue an objection before the jury.

f. Counsel may *not* approach the Courtroom Deputy Clerk or the witness box without the Court's permission.

g. Counsel must return to the lectern when her purpose has been accomplished.

h. Counsel may not enter the well of the Court without the Court's permission.

i. Counsel must rise when addressing the Court and when the jury enters or leaves the courtroom.

- j. Counsel must address all remarks to the Court. Counsel must not directly address the Courtroom Deputy Clerk, the reporter, or opposing counsel.
- k. If counsel wish to speak with opposing counsel, counsel must ask permission to talk to counsel off the record.
- l. All requests for the read-back of questions or answers or to have an exhibit placed in front of a witness must be addressed to the Court.
- m. Counsel may not make an offer of stipulation unless counsel has conferred with opposing counsel and reached an agreement.
- n. Any stipulation of fact requires defendant's personal concurrence and must be submitted to the Court in writing for approval.
- o. A proposed stipulation must be explained to defendant in advance.
- p. While the Court is in session, counsel may not leave counsel table to confer with others unless permission is granted.
- q. When a party has more than one lawyer, only one may conduct the examination of a given witness and only that same lawyer may handle objections during the testimony of that witness.
- r. If a witness was on the stand at a recess or adjournment, counsel must have the witness back on the stand and ready to proceed when Court resumes.
- s. If counsel is out of witnesses and there is more than a brief delay, the Court may deem that counsel has rested.
- t. The Court attempts to cooperate with doctors and other professional witnesses and will likely accommodate them by permitting them to be out of sequence. Counsel should anticipate any such possibility and discuss it with opposing counsel. If there is an objection, counsel must confer with the Court in advance.
- u. Counsel are advised to be on time.
- v. Counsel may not by facial expression, nodding, or other conduct exhibit any opinions concerning any testimony being given by a witness. Counsel must advise their clients and witnesses to avoid such conduct.

1 w. Voir Dire: At least four court days prior to trial, each counsel must file with the Clerk
2 and serve on opposing counsel any questions they seek the Court to ask
3 prospective jurors during voir dire. The parties need not submit requests for
4 standard voir dire questions, but should propose questions specifically tailored to the
5 parties and issues of the case.

6 **13. Sentencing Proceedings:** Sentencing proceedings are conducted pursuant to Fed. R.
7 Crim. P. 32(a) and Local Criminal Rule 32. If any party wishes to present material to the
8 Court related to the sentencing, such party must file, or otherwise make available, and
9 serve opposing counsel and the assigned United States Probation Officer with that
10 information no later than two weeks before the scheduled sentencing hearing. A statement
11 of each party's position concerning sentencing must be filed, or otherwise made available,
12 and served no later than two weeks before the sentencing hearing and the proof of service
13 must reflect service on the Probation Officer. The Probation Officer must be able to
14 prepare and disclose any addendum that may be required in response to new material or
15 a party's sentencing position. Failure to timely file or present and serve such material or
16 statement of position may result in that information not being considered by the Court in
17 imposing defendant's sentence.

18 The Local Rules and Federal Rules of Criminal Procedure control any issue not specifically
19 addressed in this Order. For further information regarding the Court's preferences refer to
20 www.cacd.uscourts.gov > Judges' Procedures and Schedules > Hon. S. James Otero.

21 The Court thanks counsel and the parties for their anticipated cooperation.

22 IT IS SO ORDERED.

23
24 Dated this _____ day of January, 2008.

25
26 _____
27 S. JAMES OTERO
28 UNITED STATES DISTRICT JUDGE